IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8570 of 2005
With
SPECIAL CIVIL APPLICATION No. 8573 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BRAHMBHATT ANANTRAI SHANKERLAL THRO.P.O.A.HOLDER - Petitioner(s)

Versus

SHAH CHIMANLAL HIMCHAND THRO.P.O.A. HOLDER & 1 - Respondent(s)

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Appearance :
MR NS SHETH for Petitioner(s) : 1,
MR BD KARIA for Respondent(s) : 1,
None for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 2.2.1, 2.2.2,2.2.4
NOTICE NOT RECD BACK for Respondent(s) : 2.2.3
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 14/09/2005

ORAL COMMON JUDGMENT

Rule. Shri BD Karia, learned advocate waives service of Rule on behalf of contesting respondents. With the consent of parties, both these

Special Civil Applications are taken up for final hearing today and as common questions of law and facts arise, both these Special Civil Applications are disposed of by this common Judgment and Order.

2. The dispute is with regard to Revenue Entries No. 7498, 7499 and 7500 with regard to land bearing Survey No. 3294 admeasuring 2 acres and 36 gunthas and Survey No. 3298/2 admeasuring 2 acres and 32 gunthas and Survey No. 3297/1 admeasuring 1 acre and 15 gunthas of land situate at Village Kondh, Taluka Dhrangadhra, Surendranagar District. The lands in question were originally owned by one Shah Lagharchand Himchand who sold the aforesaid lands to the respective petitioners by registered sale deeds on 6.3.1993 and on the basis of which names of the petitioners were mutated in the Record of Rights vide Entries No. 7498, 7499 and 7500 on 24.7.1993. The contesting respondents objected to the said entries by way of application submitted before the Mamlatdar, Dhrangadhra and requested not to certify the said entries. It was submitted that with regard to the lands in question and the partition a civil suit is pending before the competent Civil Court and therefore considering the same the Mamlatdar, Dhrangadhra passed an order not certifying Entries No. 7498, 7499 and 7500. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Dhrangadhra, dated 30th November 1993 the petitioners preferred Tenancy Appeals before the Deputy

Collector, Dhrangadhra and the same being RRT Appeals No. 8, 9, and 10 of 1995-1996 came to be dismissed by the Deputy Collector, Dhrangadhra by judgment and order dated 5.6.2002. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dhrangadhra dated 5.6.2002 in RRT Appeals No. 8, 9 and 10/95 the respective petitioners preferred revision applications before the Collector, Surendranagar which also came to be dismissed. Being aggrieved and dissatisfied with the order passed by the Collector, Surendranagar dated 15.7.2003 the petitioner preferred Revision Application No. 30/2003 before the Secretary (Appeals), Revenue Department, State of Gujarat and the Secretary (Appeals), Revenue Department by judgment and order dated 22.9.2004 dismissed the said revision application confirming the order passed by all the authorities below in not certifying the Entries No. 7498, 7499 and 7500 with respect to the lands in question. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Additional Secretary (Appeals), Revenue Department, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri NS Sheth, learned advocate appearing on behalf of the petitioner has submitted that the petitioner is the purchaser of the land in question by registered Sale Deed and therefore the Revenue authorities were required to make necessary entries

in the revenue records showing the transaction in favour of the petitioners by way of Registered Sale Deeds. He has further submitted that the dispute with regard to the title is not required to be considered by the Revenue authorities and in view of the fact that the civil suit is pending the Revenue authorities could have passed an order by stating that the aforesaid entries which were in favour of the petitioners are subject to ultimate outcome of the civil suit pending between the parties. He has relied upon the judgment of this Court in the case of Ganeshbhai Manilal Mayavanshi Vs. State of Gujarat & Ors., reported in (2005) 9 G.H.J. Page 634 in support of his above submission.

4. Per contra, Shri BD Karia, learned advocate appearing on behalf of the contesting respondents had submitted that in view of the fact that the sale in favour of the petitioner is illegal as deceased Shah Lagharchand Himchand who has sold the land in question to the petitioners could not have sold the entire land to the petitioners as he was not the absolute owner of the lands in question and in view of the fact that there is a civil suit pending between the parties all the authorities below have rightly held that entries in favour of the petitioners on the basis of the sale deeds are not required to be certified and therefore it is

requested to dismiss both the Special Civil Applications.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioners are the purchasers of the lands in question for a consideration by registered Sale Deed. It is also not in dispute that there is a civil suit pending with regard to the land in question being Regular Civil Suit No. 204/1993 in the Court of Civil Judge (SD), Dhrangadhra. As held by the learned Single Judge of this Court in the case of *Ganeshbhai Manilal Mayavanshi (supra)* that entries on the basis of a registered Sale Deed deserve to be mentioned in the record , however if there is any dispute then the said entries would be with the qualification that the said entries are subject to ultimate outcome of the civil proceedings pending between the parties and an additional entry can be made by the Revenue authorities to that effect. Even otherwise, as held by this Court in the case of Gandabhai Dalpatbhai Patel Vs. State of Gujarat, reported in 2005(2) GLR Page 1370 an entry in the Revenue record has only presumptive value for the purpose of revenue collection and in RTS proceedings the Revenue authorities cannot go into the dispute with regard to title and if there is any dispute the parties are required to be relegated

to approach the civil court for establishing their rights. In the present case, as stated hereinabove the civil suit is already pending with regard to the lands in question. At the same time, the petitioners are the purchasers of the lands in question by registered Sale Deeds and therefore the Revenue authorities are bound to give effect to the sale deeds in the Revenue records by mutating the names of the petitioners in the Revenue records on the basis of the said registered sale deeds. However in view of the dispute between the parties, while making such entries an additional Entry can be made to the effect that a Civil Suit is pending with regard to the lands in question and that the said entries are subject to the ultimate outcome of the said civil suit pending before the competent Civil Court. In the present case, all the authorities below have refused to certify the Entries in question on the ground that the Civil Suit is pending which is not proper and which is contrary to the Judgment of this Court in the case of *Ganeshbhai Manilal Mayavanshi (supra) and Gandalal Dalpatbhai Patel (supra)* and therefore all the orders are required to be quashed and set aside and the Revenue authorities are required to be directed to certify the Entries in question with a further direction to make an additional Entry that the said Entries are subject to ultimate outcome of the Regular Civil Suit No. 204/1993 pending in the Court of Civil Judge (SD), Dhrangadhra.

6. For the foregoing reasons, both the petitions succeed. The judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 22.9.2004 in Revision Application No. 30/2003 and the order passed by the Collector, Surendranagar dated 15.7.2003, the order dated 5.6.2002 passed by the Deputy Collector, Dhrangadhra, and the order passed by the Mamlatdar, Dhrangadhra dated 30.11.2003 in not certifying Entries No. 7498, 7499 and 7500 are hereby quashed and set aside. The Mamlatdar, Dhrangadhra is directed to certify the aforesaid Entries No. 7498, 7499 and 7500 with regard to the lands in question and to mutate the names of the petitioners on the basis of the Registered Sale Deeds bearing Nos. 399, 400 and 401 dated 6.9.1993, and also to make an additional Entry in the Revenue records while mutating the aforesaid Entries mentioning therein that the aforesaid Entries are subject to ultimate outcome of the Regular Civil Suit No. 204/1993. Rule is made absolute to the aforesaid extent in each of the matter. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.